

DEPARTMENT OF STATE REVENUE

29970529.LOF

LETTER OF FINDINGS NUMBER: 97-0529 CG

Denial Of Application For Indiana Charity Gaming License

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Charity Gaming - Qualified Organization

Authority: IC 432-6-20(1)(C); IC 68.1-5-1; 45 IAC 18-2-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The taxpayer protests the Department's denial of its application for an Indiana Charity Gaming License.

STATEMENT OF FACTS

The taxpayer was incorporated on October 21, 1996 under the laws of the State of Indiana. The taxpayer filed a CG-1 (Indiana Charity Gaming Qualification Application) on April 25, 1997. The Department denied the taxpayer's application in two letters dated September 3, 1997 and again on September 24, 1997. The Department's denial was based upon the taxpayer's failure to comply with IC 432-6-20(1)(c). The taxpayer's CG-1 stated that they had been in existence for less than one year at the time of filing. The taxpayer's CG-1 also stated that they were affiliated with a parent organization which had been in existence for seven and one-half (7 ½) years.

Additional information will be provided as necessary.

I. Charity Gaming - Qualified Organization

DISCUSSION

The taxpayer protests the Department's denial of its application for an Indiana Charity Gaming License based upon the Department's determination that neither the taxpayer nor its parent organization had been in continuous existence for at least five years pursuant to IC 432-6-20(1)(c). The taxpayer contends that its parent organization had been in existence for seven and one-half (7½) years at the time their application was filed.

The Department's witness stated under oath that the taxpayer's parent organization had not only lost its gaming status, but had not been in existence for the mandatory five year period, at the time the taxpayer's application was filed. The taxpayer failed to attend the hearing (numerous letters were written with no response, and phone calls made to the taxpayer were not returned), so no other documentation other than the CG-1 is available to support the taxpayer's protest. The taxpayer filed with its CG-1 the following documentation:

- Additional information for Question #9 & #10
- Additional information for Question #11
- Indianapolis Chapter's Federal 501(c)(3) status letter
- Bloomington Chapter's Federal 501(c)(3) status letter
- Letter from Parent Organization
- Certificate of Incorporation
- Articles of Incorporation
- Copy of By-Laws of organization

Pursuant to IC 432-6-20 a qualified organization means a bona fide religious, educational, senior citizen, veterans, or civic organization operating in Indiana that:

(A) operates without profit to the organization's members;

(B) is exempt from:

(I) taxation under Section 501 of the Internal Revenue Code...

and...

has been continuously in existence for at least five (5) years or is **affiliated with an Indiana parent organization that has been in existence for at least five (5) years...**

Emphasis added.

Additionally IC 432-6-20 states that the organization must be "operating". The Department gives this word its ordinary and plain meaning. Operating is defined by Webster's Dictionary as, "adj: of, relating to, or used for or in operations. The word "operate" means, "1: to bring about: EFFECT 2 a: to cause to function: WORK b: to put or keep in operation..." Webster's New Collegiate Dictionary (1979). According to the Department's witnesses neither the taxpayer nor its parent organization had been continuously operating for a period of five years.

Finally, the Department must determine whether or not the taxpayer's parent organization has been in continuous

existence for at least five years. 45 IAC 18-2-1 states:

(a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

* * *

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(C) Proof that the organization has been in existence for five (5) or more years.

Emphasis added.

According to page three of the Department's form CG-1, the relevant facts in determining continuous existence could include a combination of the following items:

Indiana Forms IT-35 AR and IT-20NP;

Federal Form 990 and/or 990T if applicable;

minutes of meetings;

bank statements;

dated newspaper articles;

any type of dated state or local licensing permits, such as alcoholic beverage licenses and registration with the Secretary of State's office;

account payables, including copies of dated invoices;

account receivables, including copies of dated invoices;

utility bills;

dated leases;

canceled checks (representing each of the five years);

bylaws that are dated;

dated articles of incorporation;

affidavits or letters of confirmation from the national or parent organization on organization letterhead; and descriptions and results of fund-raising activities for the last five years.

The taxpayer failed to attend the hearing and thus did not provide any of the above referenced documentation. Pursuant to IC 68.1-5-1 the Department's findings are prima facie evidence that the Department's claim that the entity does not qualify for a license is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See also Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). In this instance the taxpayer failed to attend the hearing and therefore, did not meet its burden of proof. The taxpayer's protest is respectfully denied.

FINDING

The taxpayer's protest is denied.